

# OFFICE OF THE CONTRACTOR-GENERAL

## Report of Investigation

Conducted into the National Solid Waste Management Authority (NSWMA)  
Re: Follow-up Report and Investigation of Contracts Awarded for the Riverton Disposal Site

Ministry of Local Government and Environment

### EXECUTIVE SUMMARY

In 2006 May 5, the Office of the Contractor General (OCG) initiated a follow-up investigation to its 2005 investigation of the National Solid Waste Management Authority (NSWMA), an agency of the then Ministry of Local Government, Community Development and Sports (MLGCD&S).

It was found that the NSWMA had made some effort to implement the Contractor General's recommendations contained in the OCG's 2005 June 22 Report. The follow up investigation revealed that, of the twenty-one (21) recommendations which were made in the 2005 June 22 Report, nine (9) recommendations have been fully implemented, and twelve (12) recommendations were at various stages of implementation.

However, despite the shortcomings which were identified in the 2005 June 22 Report, the NSWMA continues to procure services outside of the Government Procurement Guidelines. A subsequent investigation of contracts awarded for the Riverton Disposal Site concluded that over the period 2005 June to 2006 February, fifty-one (51) contracts, totaling Thirty Seven Million, Three Hundred and Eighty-Nine Thousand, Eight Hundred and Forty-Seven dollars (\$37,389,847.00) were awarded to four (4) contractors, without referral to, and/or the approval of, the NSWMA Board, and in some instances, without endorsement by the NCC.

The NSWMA's Board has since taken steps to arrest the problem of the award of contracts without the requisite internal approvals and subsequent endorsement of the NCC. These steps include initiatives that will foster better adherence to the established Government Procurement Guidelines, specifically:

- The NSWMA, with the Board's approval, has prepared a Procurement Policy in accordance with the Government Procurement Procedures Handbook (GPPH) to be utilized for all of their procurement matters and at all of their operation sites;
- Subsequent tender documents for the hiring and lease of heavy equipment that had been prepared by the NSWMA, were referred to the Office of the Contractor General for review;

- Contracts that were to become due for expiration were referred to the NCC and the OCG.

It is recommended that the Ministry of Local Government and Environment implement effective measures to ensure that the NSWMA adheres, at all times, to the Government Procurement Guidelines when procuring goods, works and services. It is also recommended that the NSWMA Board and its Procurement Committee pay strict attention to the GOJ Emergency Procurement Guidelines, and that intensive procurement training be undertaken for its Procurement Committee.

## **INTRODUCTION**

On 2006 May 5, the Office of the Contractor-General (OCG) initiated, by letter, a follow-up investigation of the NSWMA procurement practices further to its 2005 investigation and 2005 June 22 Report. In addition, the OCG commenced an investigation into allegations which were then made that contracts in excess of Forty Million dollars (\$40,000,000.00), in value, were awarded by the NSWMA without the approval of its Board.

The scope of work for the investigation was informed by the terms of references which are detailed below.

## **TERMS OF REFERENCE**

The terms of reference of the investigation were:

- (a) To determine if, and to what extent, the recommendations made in the OCG's Report, dated 2005 June 22, have been implemented;
- (b) To review NSWMA contracts which were awarded over the period 2005 July to 2006 April, with a view to determining whether the awards were made in conformity with applicable Government Procurement Procedures.

## **BACKGROUND**

The NSWMA was established as a statutory organization on 2001 December 20. The agency's mandate includes the orderly collection, cleaning, disposal and management of solid waste in Jamaica. It is also charged with the responsibility of minimizing the environmental impact of solid waste. The OCG initiated an investigation into the procurement practices of the NSWMA in 2005 June following concerns which were raised in the media regarding the Authority's operations. The OCG submitted a Final Report, dated 2005 June 22, on the activities of the NSWMA, which included twenty-one recommendations which were to be implemented to ensure fairness, transparency and propriety in the conduct of future NSWMA procuring practices.

On 2006 May 5, the OCG initiated a follow-up investigation further to its Final Report, dated 2005 June 22, to ascertain the status of implementation of the recommendations.

In light of the more recent allegations which were made regarding the NSWMA's award of contracts in excess of Forty Million dollars (\$40,000,000.00) in value, without the approval of the Board, the OCG initiated an investigation into the award of contracts for the NSWMA's Riverton Disposal site in 2005 and 2006.

## **METHODOLOGY**

The following methodology informed the observations and conclusions of the investigation:

1. Meetings and interviews with the Executive Director and members of the NSWMA Board;
2. Meetings and interviews with the Director of Finance, NSWMA;
3. Review of correspondence and statements of accounts for relevant NSWMA contracts;
4. Collection and review of minutes of NSWMA Board meetings.

## **OBSERVATIONS**

An examination of the documents supplied by the NSWMA revealed the following:

### **a. Follow-up Investigation of the NSWMA Procurement Practices**

The 2005 June 22 Report that followed the OCG's initial NSWMA investigation highlighted twenty-one recommendations. The follow-up investigation into the contract practices of the NSWMA revealed that the agency had implemented the recommendations as follows (the original recommendations are in italics):

1. *Separate the functions of the Executive Director from that of the Chairman of the Board.*  
The separation of the functions of the Executive Director from that of the Chairman of the Board had been effected.
2. *Restore the approved organization structure and undertake an organizational review after six months in collaboration with the portfolio Ministry and the Corporate Management and Development Branch (formerly Management Development Division).*  
The NSWMA is currently operating with the approved organizational structure, following a collaborative effort between the Ministry of Local Government and the Corporate Management and Development Branch.

The following are the positions (and the status of each), which were incorporated by NSWMA, but were not part of the approved organizational structure:

- **Transport Supervisor:** The contract for this position expired on 2006 March 8, and was reportedly extended for two months due to the illness of the officer. A review of the position is currently being conducted to determine whether the functions could be reassigned to other positions on the approved structure, or whether the position is warranted and should be added to the structure.

- **Special Projects Officer:** The contract for this position was not renewed upon its expiration on 2006 January 16. Special projects are being handled at the regional level.
  - **Community Relations Manager:** The contract for the Community Relations Manager expired in June 2005. Based upon the recommendation of the former Permanent Secretary in the Ministry of Local Government, the responsibilities of this post were added to the Safety Manager's position, which was already existing within the approved organizational structure.
  - **Parks Supervisor:** A request was made for this position to be added to the approved structure. (Note: The approved structure makes provision for the position of a Parks Manager and not for a Supervisor).
3. *Establish a Procurement Committee.* A procurement policy, with spending limits for the Executive Director, has been established. The composition of the Procurement Committee, inclusive of terms of reference and procedural manual, was approved by the Board on 2006 May 30. The terms of reference established were in accordance with the Government Procurement Guidelines and were approved by the Board.
  4. *Develop more detailed reporting requirements for the Director of Finance.* The position of the Director of Finance became vacant in 2005 June, following the resignation of the incumbent Director of Finance. Clear terms of reference and a job description were developed for the position. The position was advertised and a new Director appointed in 2006 January.
  5. *Develop and enter into framework contracts in respect of equipment rental and maintenance through a competitive tendering process.* Fifteen-day framework contracts for equipment rental were developed. Invitations to tender were advertised publicly and evaluated between 2005 November and December. The selection of contractors was delayed due to concerns about the tender document. A new tender document was developed in consultation with the Office of the Contractor General and the contract was put to public tender in July 2006.
  6. *Do not renew the Human Resources Consultant Contract. The Human Resources Department should complete any outstanding deliverables.* The contract for the Human Resources Consultant was not renewed. The outstanding deliverables with respect to the Human Resource Department were reportedly being completed.
  7. *Do not renew the Information Technology Consultancy Contract. Employ an IT Manager to fill the related establishment position. Any outstanding deliverables from the IT Consultancy Contract would be completed by the IT Manager.* The Information Technology Consultant voluntarily terminated his contract on 2006 July 29. The System Administrator is currently acting as the Information Technology Manager as of 2006 January 10.

8. *The Ministry of Local Government, Community Development & Sport must conduct a comprehensive review of all Employment Contracts to address all inconsistencies with Government Employment Policy and Procedures.* The then Ministry of Local Government, Community Development and Sport conducted a review of all employment contracts. The contracts were subsequently sent to the Solicitor General for further review.
9. *Invite the Auditor General to undertake a complete financial audit of NSWMA, prepare an up-to-date balance sheet and to determine whether all the NSWMA's assets are properly accounted for.* The Auditor General undertook and completed a financial audit of the NSWMA. Plans were developed to bring the outstanding financial statements of accounts up to date.
10. *The Ministry of Local Government, Community Development & Sport must undertake an independent management audit of the NSWMA to include a detailed review of the Directors of Finance, Corporate Services, Planning & Research, as well as the Internal Auditor.* An independent management audit of NSWMA has not yet commenced.
11. *Establish a proper record management system for the operation of equipment. This system must record, at a minimum, the operational times for each piece of equipment, as well as a system for data verification.* A proper records management system, which was developed by a consultant for the operation of equipment, was implemented. Among the recommendations made was that no equipment was to operate for more than twelve hours per day.
12. *Conduct an independent evaluation of the bulldozers owned by NSWMA to determine their suitability for efficient operation in a landfill environment. The NSWMA may wish to divest some of this equipment and procure more suitable equipment or to exchange them for those being used at the Retirement site.* An independent evaluation of the bulldozers owned by NSWMA was completed in 2006 to determine their suitability for efficient operations at the landfill.
13. *Conduct an independent technical audit of the rehabilitation section of the Riverton Access Road to determine the conformity of executed works with the design specifications. Request the Auditor General to audit the project accounts against the findings of the technical audit.* Technical audits were reportedly conducted by the Ministry of Local Government's Technical Department and Patrick Aitcheson, an independent consultant. The OCG requested, but was not furnished with a copy of the Ministry's technical audit report. The audit report, which was prepared by the independent consultant, is dated 2006 April. The report speaks to field investigations, inspection and measurements that have been carried out, but it does not indicate a date when these activities were actually conducted.
14. *Repair weight scale(s) for trucks at the Riverton Landfill.* An assessment of repairs to the scale was conducted by the local agents, and is to be submitted to the Board.

15. *Invite National Works Agency or Jamaica Urban Transit Company Ltd. to conduct a comprehensive review of the operations of the facility including, but not limited to, the contracts with internal maintenance staff and all external maintenance and service contracts.* Both NWA and JUTC were invited to assist with the review of the operations of the Maintenance Services facility at 97 Hagley Park Road with respect to service contracts, but they informed the NSWMA that they were unable to assist.
16. *Invite the Auditor General to conduct a financial audit of the operations of this [97 Hagley Park Road] facility giving particular attention to procurement of spare parts and supplies.* The OCG's recommendation to invite the Auditor General to conduct a financial audit of the operations of the Maintenance Services facility at 97 Hagley Park Road, with particular attention to procurement of spare parts and supplies, was not implemented. Instead the NSWMA engaged the Ministry of Local Government's Internal Auditors to conduct the audit.
17. *Design and implement adequate control measures for the disbursement and repayment of fuel, tyres, lubricants and other related supplies to contractors.* An internal control system, for the disbursement and repayment of fuel, tyres, lubricants and other related supplies, that was developed by an independent consultant, was rehashed and reportedly put in place.
18. *Regularize fuel purchases utilizing Government Framework Agreement.* The NSWMA reportedly was in final negotiations with PETCOM to regularize its fuel purchases utilizing the Government's framework contract agreement.
19. *Develop comprehensive tender documents, including evaluation methodology, for the solid waste collection contracts.* The recommendation to develop comprehensive tender documents for solid waste collection contracts has not been implemented. The collection of relevant data and the redefining of zones are presently being conducted.
20. *On the expiration of the existing contracts, engage in a competitive tender process in accordance with the GOJ Procurement Policy and Procedures resulting in contract award.* The NSWMA has made a request to the NCC to extend, where applicable, the existing contracts for a further period of three months in order to allow these contracts to go to tender.
21. *Review the existing terms of lease agreement for the Supplementary Fleet regarding the public liability exposure of the NSWMA. The authority should consider entering into lease purchase arrangements with those contractors who have successfully tendered on the solid waste collection contracts.* The NSWMA has reported that the terms of the existing lease have been evaluated and the recommendations are subject to Board approval.



**b. Contracts Awarded Since June 2005**

Documents submitted by the NSWMA indicate that during the period 2005 June to 2006 February, the NSWMA awarded fifty-one (51) contracts totaling Thirty Seven Million, Three Hundred and Eighty-Nine Thousand, Eight Hundred and Forty-Seven dollars (\$37,389,847.00) to four (4) contractors. (Please see Appendix 1). These contracts were awarded for the supply of equipment for emergency works at the Riverton Landfill and other operations that may have been demanded in the national interest, such as the clearing of road blocks, etc. The period for the contracts ranged from 1-31 days. The four (4) contractors engaged over the period and their total contract awards for 2005 and 2006 were:

1. DaCosta Construction

Contract year: 2005  
Total Value: \$1,247,472.00

2. S. Green & Associates

Contract year: 2005  
Total Value: \$16,616,375.00

Contract year: 2006  
Total Value: \$10,167,500.00

3. Melrose Farm

Contract year: 2005  
Total Value: \$3,647,000.00

Contract year: 2006  
Total Value: \$1,606,500.00

4. Bajad Limited

Contract year: 2005  
Total Value: \$4,105,000.00

During the period 2005 June to December, contracts totaling Twenty-Five Million, Six Hundred and Fifteen Thousand, Eight Hundred and Forty-Seven dollars (\$25,615,847.00) were awarded. Contracts totaling Eleven Million, Seven Hundred and Seventy-Four Thousand dollars (\$11,774,000.00) were awarded for the period 2006 January to February. (Please see Appendix 1 for a breakdown of each contract and the dates they were awarded).

Nine (9) contracts valued at over One Million (\$1,000,000.00) each, were awarded to S.Green and Associates during the period 2005 July to 2006 February. One contract, valued at One Million, Two Hundred and Forty-Seven Thousand, and Four Hundred and Seventy-Two dollars (\$1,247,472.00) was awarded to DaCosta Construction in 2005 January. Two contracts, valued at over One Million dollars (\$1,000,000.00) each, were awarded to Bajad Limited during the period 2005 September to 2006 July.

The documents submitted to the OCG by the NSWMA indicate that these awards were awarded without the NSWMA Board's approval and subsequent endorsement from the National Contracts Commission. Furthermore, there is no evidence to suggest that these contracts were awarded on a competitive basis. If these contracts were awarded under emergency circumstances, then the applicable Government Procurement Guidelines, as they relate to emergency contracting, were not utilized.

The NSWMA Board minutes for the period 2005 July to 2006 April revealed that the issue concerning the award of contracts was deliberated upon on several occasions.

The Board minutes for the meeting, held on 2006 February 22, indicated that the then Chairman of the Board, Mr. Prakash Vaswani, raised some concerns on the matter of contracts awarded for services, particularly as it related to tractors and truck hireages. It was recorded that Mr. Vaswani, in reviewing the financial records of the NSWMA, observed that the dollar value for contracted services had increased from \$3.8M to \$8.4M between 2004 December and 2005 December. He also noted that the Board had not approved any contracts for the stated equipment since 2005 July 1. He therefore wanted to find out how those contracts had been awarded, to whom they were awarded, and why the Board had not been informed of those contracts.

The Chairman requested that an investigation into the award of those contracts be conducted. He added that the Government Procurement Procedures must be followed and where there were breaches, they were to be brought to the attention of the Board.

At that same meeting of 2006 February 22, a draft procurement policy was considered. The proposed procurement policy included the establishment of a Procurement Committee, the role and function of the Procurement Committee and the monetary limit at which approval must be granted. The policy allowed for the Board to approve contracts valued up to \$4M. In keeping with the requirements of the GPPH, contracts between \$4M and \$15M would be referred to the National Contracts Commission, and contracts above \$15M would be further referred to Cabinet for approval prior to award. The Board also agreed that the Executive Director should be given a procurement limit of \$500,000.00 from that period onward.

The Board meeting of 2006 March 28 recorded that an investigation into a report of irregularities in the award of work at the Riverton Disposal Site, had begun. The Chairman of the Board informed the meeting that he had reviewed a report which showed that \$37.4M had been spent at the Riverton Disposal Site from 2005 July to 2006 February. The deliberations on the matter was recorded as follows:

- The Operations Sub-committee had directed the Finance Director to investigate and submit a detailed report on the contractors which were employed at the Riverton Disposal Site from 2005 July;
- It was noted that millions of dollars had been paid to S. Green, who was the dominant contractor;
- Melrose Farms was again hired at Riverton and was paid \$800,000 in 2005 September, \$1.1 M in 2005 October, \$689,000 in 2005 November, \$1.1M in 2005 December, \$1.1M in 2006 January and \$521,000 in 2006 February, producing a total of \$5.3M;
- Concerns were raised about the re-hiring of Melrose Farms at the Riverton Disposal Site;
- Concerns were also raised that none of the work at the Riverton Disposal Site had been tendered, whether selectively or otherwise.



The issue of procuring services to manage emergencies at the Riverton Landfill was also discussed by the Board at that meeting. It was finally suggested that the Board sign off on a method of procurement utilizing the National Contracts Commission Guidelines for emergency works for work to be given out below the Four Million dollars (\$4,000,000.00) threshold. For works that were above the threshold, Selective Tendering should be conducted at the earliest possible time, in order to mitigate the problem that the NSWMA was having with respect to the award of contracts.

Further analysis of the contract particulars for equipment rental revealed that a system was in place. However, it did not allow for Board approval at any stage. The system in place is outlined as follows:

1. There is a standard form that is used by all four subsidiaries of the NSWMA. This standard form stipulates that all transactions which are in excess of \$5,000.00 must be executed via contract. The form must be completed and approved before a contract can be executed;
2. The details of the form outline the name of the contractor, work description, contract duration, contract sum, first approval – signing officer, Operations Manager, final approval - Director of Operations and the date of transaction;
3. The completed request form is then copied to the Executive Director;
4. Attached to the request form is an Invoice from the supplier of the service;
5. Finally, a Time Sheet indicating the amount of hours worked, signed by the operator of the equipment and the Time Keeper, is submitted to the Director of Operations.

Since that report, the NSWMA's Board has taken some steps to arrest the problem of contracts being awarded without the requisite internal approvals and the subsequent endorsement of the National Contracts Commission. Specific activities are:

- The NSWMA, with the Board's approval, has prepared a procurement policy in accordance with the Government Procurement Procedures Handbook (GPPH) to be utilized for all their procurement matters at all of its operation sites;
- Subsequent tender documents for the hiring and lease of heavy equipments that have been prepared by the NSWMA were referred to the Office of the Contractor General for review;
- Contracts that were to become due for expiration were referred to the NCC and the OCG.

**c. Procurement of Consultant**

The investigation also found that the engagement of Patrick Aitcheson in 2005 to undertake the technical audit of the Riverton Boulevard Rehabilitation works at the Riverton Landfill, was done without competitive tendering. The selection of the consultant appeared to have been carried out by nothing less than 'hand-picking'. The Board minutes of 2005 October 26 indicated that the Board approved the engagement of the consultant at that meeting.

## CONCLUSIONS

It is reasonable to conclude from the deliberations which are recorded in the NSWMA's Board minutes, that there was no system in place at the NSWMA for Board approval to be granted before a contract was awarded for the hiring of equipment.

It is also concluded that contracts for the Riverton site were awarded via the sole sourcing method, and without the requisite NCC approval or NSWMA Board endorsement. Prior written approval should have been sought and granted by the National Contracts Commission for all contracts above One Million dollars (\$1,000,000.00) before sole sourcing occurred.

The NSWMA has made some effort to implement the recommendations of the OCG's 2005 June 22 report. Of the twenty-one (21) recommendations which were made in the initial report, nine (9) recommendations have been fully implemented and twelve (12) recommendations are at various stages of implementation. However, the NSWMA continues to procure services outside of the Government procurement guidelines. This has been observed in its method of procuring equipment for the Riverton site in 2005 and 2006, its procurement of technical audit services in 2006, and the entity's sidestepping of the NSWMA Board and the NCC.

The investigation concluded that over the period 2005 July to 2006 April, fifty-one (51) contracts totaling Thirty Seven Million, Three Hundred and Eighty-Nine Thousand, Eight Hundred and Forty-Seven dollars (\$37,389,847.00), were awarded to four (4) contractors, without referral and or approval by the NSWMA Board, and in some instances, without endorsement by the NCC. The NSWMA's non-adherence to Government procurement procedures, in the contracting of equipment for use on the MPM Riverton site and other operations, seems to be a prevalent practice. Prior to now, the NSWMA had not developed or put in place a system that would inform the Board, or secure the requisite Board approval for these contracts prior to their execution.

The NSWMA's non-adherence to applicable Government Procurement Procedures has been partly facilitated by the lack of adequate functional equipment at its Riverton site, coupled with financial constraints, which have made it difficult for the organization to rehabilitate and replace its dilapidated fleets. The consequential effect is continuous rehiring from the same pool of four (4) contractors who are able to facilitate the NSWMA through credit of their equipment, while awaiting payment from the NSWMA when money becomes available from the Ministry. While the limitations on long term and forward procurement planning is understandable, it is felt that improper procurement procedures, and the absence of requisite approvals from the NSWMA Board and the NCC, have overshadowed the transparency of the award process and are contributing to unfair, irregular and improper procurement practices.

## RECOMMENDATIONS

The following recommendations are made in light of the forgoing observations and conclusions:

1. The NSWMA must adhere to the Government procurement procedures at all times, specifically as they relate to emergency works. The Authority, from time to time, has to respond to national emergencies and other demands, and must do so in a manner that is transparent and fair. The NSWMA Board must therefore exercise control over the procuring practices of the agency and ensure that emergency contracts are proffered in a manner that adheres to the GOJ emergency contracting policy.
2. The NSWMA's Procurement Committee should be engaged in a series of Procurement Workshops which should include extensive focus on emergency procurement policies. The NSWMA Board must also ensure that the Procurement Committee and members of the Board abide by the newly established NSWMA procurement policy and the GPPH.
3. The NSWMA Board must follow the procurement guidelines in selecting its auditing consultants and ensure that consulting contracts are awarded in a fair, transparent and competitive manner.